

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LUIS D. ORTIZ,	:	
	:	
	:	
	:	19 Civ. 171 (LGS)
	:	
-against-	:	
	:	<u>ORDER</u>
NANCY A. BERRYHILL, Acting Commissioner:	:	
of Social Security,	:	
	:	
	:	
	X	

LORNA G. SCHOFIELD, District Judge:

WHEREAS, on September 19, 2019, Defendant Acting Commissioner of Social Security filed a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (“FRCP”) or, in the alternative, a motion for summary judgment pursuant to FRCP 56 (Dkt. No. 20). On July 15, 2020, Magistrate Judge Debra Freeman issued a Report and Recommendation (the “Report”), recommending that the motion be treated as a motion for summary judgment and granted (Dkt. No. 26). On the same date, a copy of the Report was mailed to pro se Plaintiff Luis D. Ortiz;

WHEREAS, as stated in Judge Freeman’s Report, Mr. Ortiz’s deadline for any objections was seventeen days from service of the Report by mail, and Mr. Ortiz was provided guidance on how to file papers with the Court during the period of the COVID-19 outbreak (Dkt. No. 26);

WHEREAS, no objections were timely filed;

WHEREAS, in reviewing a Magistrate Judge’s Report and Recommendation, a District Judge “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b) Advisory Committee Notes; *see De La Paz*

on behalf of S.S.D. v. Comm'r of Soc. Sec., No. 17 Civ. 4804, 2018 WL 4179455, at *2 (S.D.N.Y. Aug. 31, 2018) (applying clear error standard to a report and recommendation on a motion for judgment on the pleadings brought by the Commissioner of Social Security, where pro se plaintiff did not file objections).

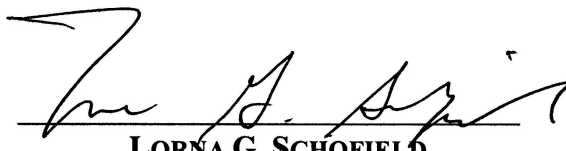
WHEREAS, upon review of Judge Freeman's thorough and well-reasoned Report, the Court finds no error, clear or otherwise. It is hereby

ORDERED that the Report is **ADOPTED** in its entirety as the opinion of the Court. For the reasons stated in the Report, the Commissioner of Social Security's motion is treated as a motion for summary judgment and is **GRANTED**.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

The Clerk of Court is respectfully requested to (1) close the motion at Dkt. No. 20, (2) close the case and (3) mail a copy of this Order to pro se Plaintiff.

Dated: August 17, 2020
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE